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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,959	07/11/2003	Elisabeth Defossa	38005-0178	2135
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ROSS J. OEHLER			DAVIS, ZINNA NORTHINGTON	
AVENTIS PHARMACEUTICALS INC. ROUTE 202-206			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE £ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Extensions for memply a emiddle under the provisions of 3° CFR 1.30(e). In no event, however, may a reply be timely filled Extensions for memply a emiddle under the provisions of 3° CFR 1.30(e). In no event, however, may a reply be timely filled If the period for reply specified above is less than thirty (30) days, a reply when the statutory minimum or thirty (30) days will be considered simely. If the period for reply specified above is less than thirty (30) days, a reply when the statutory minimum or thirty (30) days will be considered simely. If the period for reply specified above, the maximum statutory period was given and velocing 50 (8) (80) (80) (80) (80) (80) (80) (80)							
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- The MALING DATE of this communication appears on the cover sheet with the correspondence address - Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ± MONTH(S) FROM THE MALING DATE OF THIS COMMUNICATION. Extensions of term shy be available under the positions of \$10 CR1 1.35(a). In no event, however, may a reply be timely filled Extensions of term shy be available under the positions of \$10 CR1 1.35(a). In no event, however, may a reply be timely filled Extensions of term shy be available under the provisions of \$10 CR1 1.35(a). In no event, however, may a reply be timely filled If the petiod for reply appelled shows it less than thirty (30) days, and any of the petiod for reply supplied to the last on the thirty (30) days, will be considered filled. If the petiod for reply appelled shows it less than thirty (30) days, will be considered filled the petiod for reply with the sact or extended period for reply will, by statutory sended period and the petiod for reply supplied to the store than the petiod for reply will be period to the store the application to secons 48:NOCHED (80 U.S.C. § 133). Responsive to communication(s) filled on \$0.4 November 2004. This action is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under £x parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1.2 Is/are pending in the application. 4a) Of the above claim(s) 1.2 Is/are withdrawn from consideration. 5) Claim(s) 1.2 Is/are allowed. 6) Claim(s) 1.2 Is/are allowed. 6) Claim(s) 1.2 Is/are allowed. 7) Claim(s) 1.3 Is/are allowed. 8) Claim(s) 1.2 Is/are allowed. 10) The drawing(s) filled on 1.3 Is/are: all accepted or b) objected to by the Examiner. Application Papers 9) The specification is objected to by the Examiner. If approved, corrected drawings are required in reply to this Office action. 10) All	Office Action Summary						
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \$\frac{t}{2}\] MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. - Entertained of from may be available under the provisions of 37 CFR 1.35(s), in no event, however, may a reply be timely filed - Entertained of from the provision of the provisions of 37 CFR 1.35(s), in no event, however, may a reply be timely filed - Entertained of from the provision of the provision of 37 CFR 1.135(s), in no event, however, may a reply be timely filed - Entertained of the provision of the statutory minimum of thinty (80) stays will be considered simely. - If NO period for reply is specified above, the maintenant statutory provided will apply and and apply and will apply and apply	The MAIL INC DATE of this communication and						
THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be available under the provisions of 37 CFR i. 15(6). In no event, however, may a rapity be timely find after DX (8) MONTHS from the mailing date of this communication. I shall be a share DX (8) MONTHS from the mailing date of this communication. I will be a share DX (8) MONTHS from the mailing date of this communication. Failure to reply within the set of extended pendo for reply will, by statute, cause the application to become ARANDONED (35 U.S.C. § 133). Any ruphy recented by the Office after the here mained after the mailing date of this communication, even if timely field, may reduce any sessioned patent term adjustment. See 37 CFR 1.70(6). Status 1) Responsive to communication(s) filled on <u>04 November 2004</u> . 2a) This action is FINAL. 2b) This action is FINAL. 2c) This action is FINAL. 2b) This action is FINAL. 2c) Thi							
1) □ Responsive to communication(s) filed on \$\textit{94 November 2004}\$. 2a □ This action is FINAL. 2b □ This action is non-final. 3) □ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under \$Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) □ Claim(s) \$\frac{1.2}{2}\$ is/are pending in the application. 4a) Of the above claim(s) \$\frac{8.12}{2}\$ is/are withdrawn from consideration. 5] □ Claim(s) \$\frac{1.2}{2}\$ is/are ellowed. 6] □ Claim(s) \$\frac{1.2}{2}\$ is/are eljected to. 8] □ Claim(s) \$\frac{1.2}{2}\$ is/are objected to. 8] □ Claim(s) \$\frac{1.2}{2}\$ is/are objected to. 8] □ Claim(s) \$\frac{1.2}{2}\$ is/are objected to by the Examiner. Application Papers 9] □ The specification is objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). 11) □ The proposed drawing correction filed on \$\frac{1.2}{2}\$ is: a) □ approved by □ disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action. 12] □ The oath or declaration is objected to by the Examiner. Priority under 35 U.S.C. \$\frac{2}{3}\$ 119 and 120 13] □ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. \$\frac{2}{3}\$ 119(a)-(d) or (f). a) □ All b) □ Some * c) □ None of: 1. □ Certified copies of the priority documents have been received. 2. □ Certified copies of the priority documents have been received in Application No. □ application from the International Bureau (PCT Rule 17.2(a)). *See the attached detailed Office action for a list of the certified copies not received. 14) □ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. \$\frac{2}{3}\$ 120 and/or 121. Attachment(s) 14) □ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. \$\frac{2}{3}\$ 120 and/or 121.	 THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). 						
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6) ☐ Claim(s) 1-7 is/are rejected. 7) ☐ Claim(s) is/are objected to. 8) ☐ Claim(s) are subject to restriction and/or election requirement. Application Papers 9) ☐ The specification is objected to by the Examiner. 10) ☐ The drawing(s) filed on is/are: a) ☐ accepted or b) ☐ objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). 11) ☐ The proposed drawing correction filed on is: a) ☐ approved b) ☐ disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action. 12) ☐ The oath or declaration is objected to by the Examiner. Priority under 35 U.S.C. §§ 119 and 120 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) ☐ All b) ☐ Some * c) ☐ None of: 1. ☐ Certified copies of the priority documents have been received in Application No 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application). a) ☐ The translation of the foreign language provisional application has been received. 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121. Attachment(s) 1 ☐ Notice of References Cited (PTO-892) 2) ☐ Notice of References Cited (PTO-892) 3 ☐ Notice of Oratsperson's Patent Drawing Review (PTO-948) 10 ☐ Notice of Interview Summary (PTO-413) Paper No(s)	4a) Of the above claim(s) 8-12 is/are withdrawn from consideration.						
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DETAILED ACTION

- 1. Claims 1-12 are pending.
- 2. On November 4, 2004, Applicants have elected the invention of Group I, claims 1-
- 7. At page 29, Table 1, Example 13 is the preferred species.
- 3. Claims 7-12 are withdrawn from consideration by the Examiner.
- 4. Claims 1-7 are Markush claims which are generic to the elected invention. These Markush claims lack unity of invention. Accordingly, the Markush type claim will be examined fully with respect to the elected species and further to the extent necessary to determine patentability. See MPEP 803.02.
- 5. Claims 1-7 are objected on the grounds that the claims are drawn to an improper Markush group. In re Harnisch, 206 USPQ 300, states that a unity of invention exists where compounds included within a Markush group (1) share a common utility and (2) share a substantial structural feature disclosed as being essential to that utility. In the instant case, the claimed subject matter does not share a substantial structural feature disclosed as being essential to that utility.
- 6. The requirement for a proper Markush claim is that it includes only substances that in their physical, chemical and physiological characteristics are functionally equivalent. The members of the instant Markush groups possess widely different, physical and chemical properties. The compounds are not considered functionally equivalent and are so diverse that they demonstrate dissimilar and unrelated properties. The mere fact that there is structural similarity in pharmaceutical agents is not in itself reason to render

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all the embodiments functionally equivalent. See Brouwer (Reference A), which teaches benzolyurea compounds, are useful as pesticidal and pharmaceutical compositions.

- 7. The improper Markush groups are radicals are R8, R18, R19, and R20. The examined subject matter is a compound according to formula (I) wherein R8 represents N(R18)(R19) and R18 or R19 represents phenyl. The radicals, R1-R7 and R9-R12, are defined according to claim 1.
- 8. Applicants are reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h).
- 9. Amending the claims to the elected invention would overcome the improper Markush rejection.
- 10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- 11. Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
 - A. At claims 1 and 2, it is suggested that the phrase "and salts" should read "or a salt".

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B. At claim 2, the radical, R8, excludes phenyl. However, R8 cannot represent phenyl. Clarification is appreciated.

- C. At claims 3, line 6, it is suggested that the phrase "R14,R15 are independently of one another H, (C₁-C₆)alkyl ... " should be amended to read as "R14,R15 independently of one another are H or (C₁-C₆)alkyl ... ".
- D. At claims 4-7, a pharmaceutical claim should include the phrase "and an acceptable carrier".
- 12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- 13. Claims 1, 2 and 4-7 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Brouwer et al (US Patent 4,665,235).

The instantly claimed compounds are disclosed. At columns 1-4, see the benzoylurea compounds. The prior art compounds are useful in the treatment of tumors.

14. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Agro-Kanesho Co., LTD (Reference B03, cited by Applicants).

The instantly claimed compounds are disclosed. At page 450, Table 1, see compounds 1-28.

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The Information Disclosure Statements filed October 10, 2003 and December 9,

2003 have been considered.

Any inquiry concerning this communication or earlier communications from the 16.

examiner should be directed to Zinna N. Davis whose telephone number is 571-272-

0682.

17. Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published

applications may be obtained from either Private PAIR or Public PAIR. Status

information for unpublished applications is available through Private PAIR only. For

more information about the PAIR system, see http://pair-direct.uspto.gov. Should you

have questions on access to the Private PAIR system, contact the Electronic Business

Center (EBC) at 866-217-9197 (toll-free).

thington Davis Primary Examiner

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1.21.2005